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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/846,565

04/27/2001

R. Edward Winters

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PALO ALTO, CA 94304-1050

EXAMINER
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MILLER, CHERYL L

ART UNIT	PAPER NUMBER
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3738

MAIL DATE	DELIVERY MODE
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05/11/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/846,565

Applicant(s)

WINTERS, R. EDWARD

Examiner

Cheryl Miller

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-11 have been considered but are moot in view of the new ground(s) of rejection.

The applicant has argued that Brown (US 6,093,199) does not disclose nominal vessel dimensions. The examiner disagrees. Brown's device is capable of being placed in any size vessel. The device will inherently have a larger diameter (in the anchoring element) than the vessel at that location, since it functions to anchor in place thus must be of a larger diameter in order to not become detached and float downstream.

The applicant has argued that Farzin-Nia (US 6,818,076) does not disclose a primary wire having a multifilar configuration. The examiner disagrees. Farzin-Nia's wire or primary coil 10 is a multi-filar wire, the multifilar's seen at 12.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. All claims refer to a first and second axis. However, in each configuration, only one axis is present. That is, once the second configuration is present, the claimed first configuration no longer exists, as it has been altered. Therefore it is unclear which configuration is actually present, the first or the second. Claims are not method of making claims, they are product claims and thus are examined based on structure only of the end product, it is unclear as

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written, which state the applicant is claiming. Axis, is defined by its plain meaning, a *straight* line dividing a body into symmetrical parts. It is indefinite how one axis could encircle another axis. In the first unexpanded configuration, only a first axis exists (because the first axis is then straight and the second configuration does not exist yet). In the second configuration, only the second axis exists (because the second axis is straight, the prior first axis is no longer straight and may not be termed an axis). As claimed, it is unclear to the examiner, which configuration is being claimed, the starting or the final. Either way, 2 axes may not exist at one time according to the applicant's drawings. It is also indefinite that the "coil" is claimed to be "linear". Coil is defined to be helical or looped and the definition of linear contradicts such definition.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-10 and 12-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Brown et al. (US 6,093,199, cited previously). Brown discloses an expandable hoop support (10; all figs.) and procedure for opening an artery substantially as claimed. Brown discloses a preformed hoop stent (10) composed of a coil of material disposed about a first axis (not shown in figs. however disclosed at col.4, lines 48-50; primary coil) and about a second axis (secondary coil; col.4, lines 50-53; shown in figs.) and the coil having memory (fig.1A; col.3, lines 12-19)

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and a cylindrical delivery means to constrain coil into a linear configuration (col.8, lines 62-65), the delivery means being either a rod fit within the coil (over a guidewire, col.3, lines 21-24; col.4, lines 65-67) or a tube fit over the coil (through a catheter, col.3, lines 21-24; col.8, lines 62-65), and wherein when delivery means is removed in an artery (or flexible tube, as claimed in claim 1 and 8), coil reconfigures into an original preformed configuration (col.3, lines 21-27; col.4, lines 48-67; col.8, line 62-col.9, line 16). Brown's stent is adapted to hold open the vessel (see all figs as the stent anchors in the vessel, thus inherently has a larger diameter than the vessel such that it exerts outward force and stays in place). Brown discloses the stent to have openings (spaces between hoops 62, see fig.1 for example) that allow some flow of blood into a vessel opening or branch vessel (see fig.1, 7; col.3, lines 40-44; col.5, lines 5-10; col.10, lines 49-62).

Claims 1, 3-5, and 7-15 and 17-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Farzin-Nia (US 6,818,076 B1). Farzin-Nia discloses an expandable hoop support (fig.2) and procedure for opening an artery substantially as claimed. Farzin-Nia discloses a preformed hoop stent (col.3, lines 47-50; col.2, line 4) composed of a coil of material (10; 10 is multi-filar strands 12) disposed about a first axis (forming strand 10; primary coil) and about a second axis (secondary coil; windings 14) and the coil having memory (col.2, lines 49-55) and a cylindrical delivery means to constrain coil into a linear configuration (catheter/guidewire; col.3, lines 17-25), and wherein when delivery means is removed in an artery (or flexible tube, as claimed in claim 1 and 8), coil reconfigures into an original preformed configuration. Farzin-Nia's stent is adapted to hold open the vessel (col.3, lines 47-50). Farzin-Nia discloses an

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opening or irregular spacing of the secondary coil (see fig.3). These spacings *adapted* for placement near an opening in the vessel.

### *Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Miller whose telephone number is (571) 272-4755. The examiner can normally be reached on Monday-Friday 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4755. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Cheryl Miller



**BRUCE SNOW**  
PRIMARY EXAMINER